

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN MCWHORTER,

Petitioner,

v.

JEFFREY UTTECHT,

Respondent.

Case No. C06-5294RBL

ORDER DENYING
PETITIONER'S MOTION FOR
APPOINTMENT OF COUNSEL

The court has reviewed petitioner's motion for appointment of counsel (Doc. 13) and the balance of the record. It is therefore ORDERED.

(1) There is no right to have counsel appointed in cases brought under 28 U.S.C. § 2254, unless an evidentiary hearing is required or such appointment is “necessary for the effective utilization of discovery procedures.” See McCleskey v. Zant, 499 U.S. 467, 495 (1991); United States v. Duarte-Higareda, 68 F.3d 369, 370 (9th Cir. 1995); United States v. Angelone, 894 F.2d 1129, 1130 (9th Cir. 1990); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983); Rules Governing Section 2254 Cases in the United States District Courts 6(a) and 8(c). The court also may appoint counsel “at any stage of the case if the interests of justice so require.” Weygandt, 718 F.2d at 754. In deciding whether to counsel, however, the court “must evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved.” Id.

(2) Petitioner has not requested he be allowed to conduct discovery in this matter, nor does the undersigned find good cause for granting him leave to do so at this stage of the proceedings. See Rule Governing Section 2254 Cases in the United States District Courts 6(a). In addition, as the court has not

1 determined whether an evidentiary hearing will be required in this case. See Rule Governing Section 2254
2 Cases in the United States District Courts 8(c).

3 After reviewing the record, this court finds an evidentiary hearing is not necessary at this point.
4 Petitioner's motion for appointment of counsel is therefore **DENIED**.

5 DATED this 18th day of September, 2006.

6
7 /s/ J. Kelley Arnold
8 J. Kelley Arnold
9 United States Magistrate Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28